

## **Remarks / Arguments**

In the specification, paragraph [021] has been amended to correct an error of a typographical or clerical nature. Paragraphs [020], [029], [031], [033] – [039], and [042] – [044] have been amended to delete reference numeral “14,” because reference numeral “14” is not shown in the drawings.

The drawings have been corrected in compliance with 37 CFR 1.121(d).

Claims 1 – 5 and 7 – 17 remain in this application. Claims 1, 11, and 13 – 17 have been amended. Claim 6 has been canceled without prejudice.

### **1. Drawings**

Replacement Sheets containing corrected drawings in compliance with 37 CFR 1.121(d) are submitted herewith, as required by the Examiner. These Replacement Sheets replace the original sheets of drawings.

The Examiner objected to the drawings under 37 CFR 1.83(a) because the “collapsible membrane” recited in the claims was not shown in the drawings. However, the first sentence of paragraph [041] of the specification states that “the reservoir 16 may be a collapsible membrane.” Therefore, a collapsible membrane is one embodiment of the reservoir 16. Because the reservoir 16, of which the “collapsible membrane” is one embodiment, is shown in Figure 1, the Applicant respectfully requests reconsideration of the objection to the drawings under 37 CFR 1.83(a).

### **2. Claim Rejections - 35 U.S.C. §102**

#### **a. Hill**

Claims 1 – 3, 5, 7 – 8, and 10 – 13 were rejected under 35 U.S.C. §102(e) as being anticipated by Hill.

Claim 1 has been amended by adding a feature that is not included in the device described by Hill. No new matter has been added by virtue of this amendment. Claims 2, 3, 5, 7, 8, and 10 are dependent on the amended Claim 1, which is not anticipated by Hill. Therefore, Claims 2, 3, 5, 7, 8, and 10 are also not anticipated by Hill.

Moreover, the device of Claim 10 comprises an effervescent composition which includes a coloring agent. In the explanation of the rejection of Claim 10, the Examiner stated that “Hill discloses that the effervescent composition can include dyes (column 7, line 11).” However, Hill refers to dyes (column 7, line 11) as an example of a material that can be used as “the second ingredient B” (column 6, line 63 – column 7, line 11). There is no indication that “the second ingredient B” is an effervescent composition, or is part of an effervescent composition. Therefore, Hill does not disclose an effervescent composition which includes a coloring agent.

Claims 11 and 13, like Claim 1, have been amended by adding a feature that is not included in the device described by Hill. Again, no new matter is added by this amendment. Therefore, Claims 11 and 13 are not anticipated by Hill. Claim 12 is dependent on the amended Claim 11. Therefore, Claim 12 is also not anticipated by Hill.

Reconsideration of the rejections of Claims 1 – 3, 5, 7 – 8, and 10 – 13 is respectfully requested.

**b. Shayan**

Claims 1, 2, 11, 12, and 13 were rejected under 35 U.S.C. §102(e) as being anticipated by Shayan.

Claims 1, 11, and 13 have been amended by adding a feature that is not included in the device described by Shayan. Therefore, Claims 1, 11, and 13 are not anticipated by Shayan. Claim 2 is dependent on the amended Claim 1, and Claim 12 is dependent on the amended Claim 11. Therefore, Claims 2 and 12 are also not anticipated by Shayan.

Moreover, the devices of Claims 1, 2, 12, and 13 comprise a lid that is removably attachable to a reservoir. There is no indication in Shayan that the top (which the Examiner refers to as the “lid”) of the Shayan device is removably attachable to the reservoir. In fact, there is no indication in Shayan that the top is attachable to the reservoir portion of the device at all. Therefore, Shayan does not disclose a device with a lid that is removably attachable to a reservoir.

Reconsideration of the rejections of Claims 1, 2, 11, 12, and 13 is respectfully requested.

### 3. Claim Rejections - 35 U.S.C. §103

#### a. Hill

Claims 9 and 14 – 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hill.

With regard to Claim 9, the Examiner correctly acknowledges that Hill does not disclose an effervescent composition including one or more of menthol, eucalyptus oil, camphor, a flavor additive, and an excipient. However, the Examiner goes on to assert that “Hill does disclose effervescent compositions useful for the treatment of skin conditions (column 7, lines 5 – 10).” This assertion is incorrect. When Hill refers to compositions useful for the treatment of skin conditions (column 7, lines 7 – 8), Hill is exemplifying compositions that can be used as the “second ingredient B” (column 6, line 63 – column 7, line 11). There is no indication that “second ingredient B” is an effervescent composition, or is part of an effervescent composition. When discussing “first ingredient A,” Hill mentions the possibility of using “effervescent materials.” (Column 6, lines 24 – 39). However, “first ingredient A” and “second ingredient B” are two separate substances. Compositions useful for the treatment of skin conditions are not disclosed as possibilities for “first ingredient A,” and effervescent materials are not disclosed as possibilities for “second ingredient B.” Hence, Hill does not disclose effervescent compositions useful for the treatment of skin conditions.

The Examiner indicates that, because Hill discloses effervescent compositions useful for the treatment of skin conditions, and because eucalyptus oil is known in the art to be useful for the treatment of skin conditions, it would have been obvious to one of ordinary skill in the art to include eucalyptus oil as part of the effervescent composition recited in Claim 9. However, as stated above, Hill does not disclose effervescent compositions useful for the treatment of skin conditions. Therefore, Hill does not suggest the use of eucalyptus oil as a component of an effervescent composition. Because Hill does not teach or suggest all of the features recited in the claim, the invention of Claim 9 is not obvious in light of Hill. *See* M.P.E.P. §§ 2143, 2143.03; *see also In re Royka*, 490 F.2d 981, 984, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

In fact, Hill actually teaches away from including eucalyptus oil as part of the effervescent composition, due to the fact that ingredient A (which could include an effervescent material) and ingredient B (which could include a composition for treating skin conditions) are

placed in separate chambers in the Hill device. (Column 7, lines 58 – 61). Hill states that placing ingredient A and ingredient B in separate chambers makes it possible “to combine materials which have so far not been combined due to incompatibility issues.” (Column 7, lines 62 – 65). But when Hill states that it was possible “to combine materials,” the materials were only “combined” in the sense that they were in the same device (in separate chambers). Any closer level of combination, such as including eucalyptus oil as a component of an effervescent composition, as recited in Claim 9, was not contemplated. Hill clearly teaches away from such a combination, by referring to ingredient A and ingredient B materials as “materials which have so far not been combined due to incompatibility issues.” Hence, it would not have been obvious, in light of Hill, to include eucalyptus oil in an effervescent composition to arrive at the invention of Claim 9.

Moreover, Claim 1 has been amended to add a feature which is neither taught nor suggested by Hill. Claim 9 is dependent on Claim 1. Therefore, the invention of Claim 9 is not obvious in light of Hill. *See* M.P.E.P. §§ 2143, 2143.03; *see also In re Royka*, 490 F.2d 981, 984, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

Claims 14 – 17 have been amended to recite a step which is neither taught nor suggested by Hill. No new matter is added by virtue of this amendment. Therefore, Claims 14 – 17 are not obvious in light of Hill.

With regard to Claims 15 – 17, the Examiner states that the methods of Claims 15 – 17 are obvious, because “depending on the composition added to the reservoir, the device could be used for any of . . . treating cold symptoms, treating allergy symptoms, or decongesting nasal passages.” However, Hill neither teaches nor suggests the addition of a composition to a reservoir, such that inhaling the vapor resulting from the composition would treat cold symptoms, treat allergy symptoms, or decongest nasal passages. Therefore, Claims 15 – 17 are not obvious in light of Hill.

Reconsideration of the rejections of Claims 9 and 14 – 17 is respectfully requested.

**b. Shayan in view of Frank et al.**

Claims 6 and 14 – 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shayan in view of Frank et al.

The feature or features recited in Claim 6 have been added to Claim 1, and Claim 6 has been canceled.

The Examiner correctly acknowledges that Shayan does not disclose a central depressed area to loosely engage a user's nasal area. However, the Examiner states that it would have been obvious to one of ordinary skill in the art "to have provided Shayan's device with a removable hood as taught by Frank."

The Applicant respectfully asserts that there is no suggestion or motivation to combine Shayan and Frank et al. Frank et al. discloses a device which "basically comprises a steam generating and control section 12 in which a liquid, *such as water*, is heated to generate steam." (Column 5, lines 8 – 10 (emphasis added)). In contrast, Shayan is directed to the invention of a "waterless apparatus." (Claim 2). There is no suggestion or motivation in the references to combine the water-heating device of Frank et al. with the waterless apparatus of Shayan. Therefore, the device of the amended Claim 1, and the methods of Claims 14 – 17, are not obvious in light of Shayan and Frank et al. *See* M.P.E.P. § 2143.01.

Even if there were a suggestion or motivation to combine Shayan and Frank et al., the resulting combination would not have produced the invention of the amended Claim 1, nor would it have suggested the invention of the amended Claim 1. Neither Shayan nor Frank et al., alone or in combination, teaches or suggests a lid with a central depressed area.

Moreover, neither Shayan nor Frank et al., alone or in combination, teaches or suggests an area of a lid which *loosely engages* a user's nasal area. To the contrary, Frank et al. teaches a hood which is adapted for "closely *sealing* against the bridge of the user's nose" and for "*sealing* against the user's cheekbones." (Column 7, lines 55 – 58 (emphasis added)). Therefore, the invention suggested by the combination of Shayan and Frank et al. sealingly engages with the user's face, whereas the invention of the amended Claim 1 "loosely" engages the user's nasal area. Neither Shayan nor Frank et al., alone or in combination, teaches or suggests a lid with a central depressed area of a size and shape whereby during use a user's nasal area is loosely engaged by the central depressed area. Consequently, the invention of the amended Claim 1 is not obvious in light of Shayan and Frank et al. *See* M.P.E.P. §§ 2143, 2143.03; *see also In re Royka*, 490 F.2d 981, 984, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

The Examiner states that, with regard to Claims 14 – 17, the “modified device of Shayan” would be “fully capable of performing the recited method steps.” It appears that the “modified device of Shayan” refers to a device resulting from providing Shayan’s device with a removable hood, as taught by Frank et al. However, Claims 14 – 17 all include the step of filling a reservoir with hot water. In contrast, Shayan discloses a “waterless apparatus.” Therefore, even if it were obvious to modify Shayan to include a removable hood, the resulting modified device would not teach or suggest the methods of Claims 14 – 17, because Claims 14 – 17 require the use of water. Consequently, Claims 14 – 17 are not obvious in light of Shayan and Frank et al.

Moreover, Claims 14 – 17 have been amended to recite a step which is neither taught nor suggested by Shayan and Frank et al., either alone or in combination. Therefore, Claims 14 – 17 are not obvious in light of Shayan and Frank et al.

Also, Shayan and Frank et al., either alone or in combination, do not teach or suggest the addition of a composition to a reservoir, such that inhaling the vapor resulting from the composition would treat cold symptoms, treat allergy symptoms, or decongest nasal passages. Therefore, Claims 15, 16, and 17 are not obvious in light of Shayan and Frank et al.

**c. Swank in view of Shayan**

Claims 1, 4, and 11 – 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Swank in view of Shayan.

The Examiner indicates that the combination of the humidifier apparatus of Swank with the “volatile medicaments” of Shayan would render the devices of Claims 1, 4, 11, 12, and 13 obvious. The Applicant respectfully asserts that there is no suggestion or motivation to combine Swank and Shayan. Swank discloses a humidifier wherein “[w]ater is pumped from a reservoir.” (Column 2, lines 3 – 4). In contrast, Shayan is directed to the invention of a “waterless apparatus.” (Claim 2). There is no suggestion or motivation in the references to combine the water-utilizing device of Swank with the waterless apparatus of Shayan. Therefore, the invention of Claims 1, 4, and 11 – 17 is not obvious in light of Swank and Shayan. *See* M.P.E.P. § 2143.01.

Moreover, Claims 1, 11, and 13 have been amended to add a feature which is neither taught nor suggested by Swank or Shayan, either alone or in combination. Claim 4 is dependent

on Claim 1, and Claim 12 is dependent on Claim 11. Therefore, the inventions of Claims 1, 4, 11, 12, and 13 are not obvious in light of Swank and Shayan. *See* M.P.E.P. §§ 2143, 2143.03; *see also In re Royka*, 490 F.2d 981, 984, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

The Examiner states that, with regard to Claims 14 – 17, the “modified device of Swank” would be “fully capable of performing the recited method steps.” However, Claim 14 – 17 have been amended to recite a step which is neither taught nor suggested by Shayan and Swank, either alone or in combination. Therefore, Claims 14 – 17 are not obvious in light of Shayan and Swank.

Moreover, Swank and Shayan, either alone or in combination, do not teach or suggest the addition of a composition to a reservoir, such that inhaling the vapor resulting from the composition would treat cold symptoms, treat allergy symptoms, or decongest nasal passages. Therefore, Claims 15, 16, and 17 are not obvious in light of Swank and Shayan.

#### **4. Request for Reconsideration and Allowance**

Based upon the above Remarks, Claims 1 – 5 and 7 – 17, as amended, are believed to be in proper form for allowance, and patentable over the prior art made of record. Applicant respectfully requests reconsideration of the claim rejections, and requests that a timely Notice of Allowance be issued in this case.

Please direct any questions or comments regarding this application to Audrey J. Babcock  
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Respectfully submitted,  
CNS, Inc., by its attorneys,

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